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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,569	12/10/2001	Kazuo Iwai	1422-0508P	3472

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER

OLSZEWSKI, JOAN M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 01/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/006,569

Applicant(s)

IWAI, KAZUO

Examiner

Joan M. Olszewski

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 November 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 21 November 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **FINAL REJECTION**

This is in response to Applicant's amendment and rely filed November 21, 2002.

Currently, claims 11-23 are pending in this application.

With respect to the drawing and specification corrections these are considered acceptable by the Examiner, as are the 35 U.S.C. 112 second paragraph corrections.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claim 23, lines 2-3 the phrase "to any one of claims 11-22" is confusing since a method of sterilizing poultry meat would inherently produce sterilized poultry meat and as such claim 23 is redundant since it fails to identify any additional method steps.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurschner et al. (U.S. Patent 5,632,676) in view of Nishimoto et al. (U.S. Patent 6,165,964).

Regarding Claims 11, 12, 17, 18 and 23 Kurschner et al. disclose a method of sterilizing poultry meat (Abstract) comprising the step of subjecting the poultry meat to a contact treatment with a solution during the poultry processing for the production of poultry meat; wherein the contact treatment is carried out at least in one step in the poultry processing comprising plural treatment steps (column 2, lines 19-25)(Kurschner et al.) as well as in one interval between consecutive two steps in the treatment steps (column 3, lines 26-32)(Kurschner et al.); wherein the treatment step is selected from the group consisting of an evisceration step, a chilling step, and a wrapping step (column 1, lines 12-57)(Kurschner et al.); wherein the contact treatment occurs in the interval between the evisceration step and the chilling step (column 3, lines 26-32)(Kurschner et al.). Kurschner et al. do not teach the use of the contact treatment being a hinokitiol solution. However, Nishimoto et al. teach the use of an aqueous antibacterial solution of hinokitiol for disinfection purposes (Abstract) for use in food factories (column 9, lines 4-6).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made by modifying the antibacterial solution of Kurschner et al. by substituting the antibacterial solution hinokitiol as taught by Nishimoto et al. to sterilize poultry meat during processing, since in doing so one is merely replacing one

well known disinfecting agent for another. Further, these two solutions would have been art-recognized equivalents and well within the level of ordinary skill in the art.

Re- Claims 13,14,19,20 and 23, the combination of Kurschner et al. and Nishimoto et al. discloses all the claimed features including wherein the concentration of hinokitiol in the solution is from 1-50000 ppm (column 8, lines 54-60)(Nishimoto et al.); and wherein the aqueous hinokitiol solution has a PH of 4 to 11 (column 11, lines 45-47)(Nishimoto et al.).

Re- Claims 15, 21 and 23, the combination of Kurschner et al. and Nishimoto et al. discloses all the claimed features including wherein the contact treatment is carried out at a temperature of 0° to 70° C (column 3, lines 26-32)(Kurschner et al.).

Re- Claims 16,22 and 23, the combination of Kurschner et al. and Nishimoto et al. discloses all the claimed features including wherein the contact treatment is accomplished by a method consisting of applying a coat (column 3, lines 42-48)(Kurschner et al.), or spraying (column 3, lines 26-27)(Kurschner et al.), or immersion (column 3, lines 28-29)(Kurschner et al.).

### ***Response to Arguments***

Applicant's arguments filed November 21, 2002 have been fully considered but they are not persuasive.

With respect to the 35 U.S.C. 112 second paragraph rejection, Applicant is directed to the new rejection of claim 23 under 35 U.S.C. 112 second paragraph.

Applicant argues that the combination of Kurschner et al. and Nishimoto et al. is improper since there is no motivation to combine the references. However, this is

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simply not the case, the Kurschner et al. reference clearly sets forth the processing of meat along with the use of a sterilization liquid, which Applicant concedes to. Further, the Nishimoto et al. reference is directed to the use of a hinokitiol solution for sterilizing processing utensils. Again Applicant concedes that the reference teaches this. The point of contention is whether the two references can be combined to teach the claimed invention. It is the Examiner's position that since the Nishimoto et al. reference teaches that it is safe to sterilize utensils used in the processing of foods it would be obvious to have utilized the hinokitiol solution in place of other sterilizing solutions in similar areas. As such the combination of this teaching with Kurschner et al. would be the obvious substitution of one known sterilizing solution for another which would be desirable for numerous reasons such as cost, effectiveness, safety, availability, etc. Accordingly the rejection is considered proper.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski  
Examiner  
Art Unit 3643

JMO  
January 6, 2003

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600